

Neutral Citation No: [2018] NICA 17

Ref: McC10639

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 11/05/2018

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND
ON APPEAL FROM BELFAST MAGISTRATES' COURT

BETWEEN:

ANTHONY PARKER

Appellant;

-v-

CHIEF CONSTABLE OF THE POLICE SERVICE
OF NORTHERN IRELAND

Respondent.

Before: Morgan LCJ and McCloskey J

McCloskey J

Introduction

[1] By this application Anthony Parker (whom we shall describe as "the Appellant") seeks an Order under Article 146(7) of the Magistrates' Court (NI) Order 1981 compelling senior presiding District Judge Bagnall to state a case for the opinion of the Court of Appeal.

The Appellant's prosecution and convictions

[2] The Appellant was convicted at Belfast Magistrates' Court of three summary offences, as follows:

- (a) On 11 July 2016: obstructing a police constable in the execution of his duty, occurring on 21 April 2016.

- (b) On 7 June 2017: failing to provide a specimen of breath and obstructing a police constable in the execution of his duty, both occurring on 01 December 2017.

[3] The evidence available to this Court includes the witness statements of certain police officers, charge sheets, notebook entries, a custody record and the Appellant's criminal record. From these materials it is apparent that the two obstruction convictions arose out of the Appellant's refusal to provide his identity to a police constable when requested to do so. These materials further demonstrate that there was clear *prima facie* evidence of the Appellant's guilt of all three offences.

[4] The evidence of the hearing transacted before District Judge Bagnall is meagre. It would appear from the Appellant's unsworn "Affidavit of Truth" (dated 11 April 2018) that he represented himself at the hearing and made certain oral representations to the Judge. Approaching this document at its zenith and making certain assumptions in favour of the Appellant, we are disposed to accept that in his representations to the District Judge he formulated two main submissions. First, no jurisdiction: the prosecution could not proceed on the basis of charge sheets unsigned by either the Police Service of Northern Ireland ("PSNI") or the Public Prosecution Service ("PPS"), a written verified complaint under oath being required. The second identifiable submission is that the District Judge could not lawfully sentence the Appellant in the absence of certificates of conviction.

[5] On the assumption that these two submissions were advanced to the District Judge and taking into account that the Magistrates' Court is not a court of record, it is clear that they were rejected.

[6] This Court is prepared to make a further assumption in the Appellant's favour. We note from the helpful skeleton argument of Mr Henry (of counsel), representing the PPS, that upon the Appellant being arrested in respect of the second and third offences it was ascertained that there was an unexecuted bench warrant relating to his failure to attend the Magistrates' Court regarding the first offence. It is asserted, without demur from the Appellant, that this warrant was executed while he was in custody in respect of the second and third offences. We are prepared to assume that the Appellant, in a further submission to the District Judge, challenged the legality of the warrant and/or its execution.

Challenging his convictions

[7] It would appear that the Appellant has attempted to mount three separate challenges to his convictions:

- (a) First, the documentary materials which he has provided include a Notice of Appeal to the County Court, dated 24 July 2017. This challenges his convictions in respect of the breath test refusal offence and one of the obstruction offences (which being unclear). While this

Court does not know what became of this appeal, we shall assume that, for whatever reason, it brought about no alteration in the Appellant's convictions or sentences.

- (b) Certain incomplete transcripts of hearing included among the Appellant's documentary materials are indicative of a judicial review challenge. While there is no indication of its fate we shall assume that this challenge was dismissed.
- (c) Thirdly, there is the instant case stated challenge.

[8] It is clear that the Appellant made an application to District Judge Bagnall to state a case for the opinion of the Court of Appeal. This elicited an order dated 18 September 2017 which stated, *inter alia*:

"Now I, being of the opinion that the application .. is frivolous, hereby certify that such application is refused."

The "application" was contained in Form 101, signed by the Appellant and dated 24 July 2017. This Court will make a further assumption in the Appellant's favour namely that the application embraced all three convictions and sentences.

PPS Concession

[9] The Appellant's application to this Court was listed on several dates, prompted by a combination of the manifestly incomplete information and documents supplied initially by the Appellant, a series of ensuing questions from the Court and the Appellant's status of unrepresented litigant. These case management steps yielded the aforementioned skeleton argument on behalf of the PPS. This contains a concession, namely that the second of the Appellant's convictions in respect of the obstruction offences is unsustainable in law as the prosecution was incorrectly brought under section 66 of the Police Act (NI) 1998. Taking into account the decision of this Court in R v Devlin [2008] NICA 22 and being satisfied as to the correctness of this concession, the panel formally reconstituted itself as a Divisional Court and quashed the conviction of the Appellant in respect of the second obstruction offence.

Conclusions

[10] The test which we apply is whether there is an arguable case that either of the other two convictions and sentences is erroneous in law. We have identified in [4] and [6] above our understanding of the main contentions which the Appellant has at all stages advanced. These are precisely the kind of imaginative arguments typical of unrepresented litigants. Arrests, charges and summary prosecutions of this kind are governed by a series of familiar statutory requirements. The Appellant

can point to no arguable breach of any of these. Having considered the relevant statutory provisions we are satisfied that these arguments are devoid of substance.

[11] The other grounds of challenge formulated in the Appellant's application to the District Judge to state a case attract the same description and analysis. A flavour of these is readily gleaned from the following extracts:

"Trespass on my [property] common law right to travel at common law ..

No evidence of subject matter jurisdiction ...

Error of law: definition of travelling, mistakenly defined as driver ...

Conflict of interest: as Plaintiff, prosecutor, clerk, witnesses all work for the same party – the Crown ..

Constructive trust fraud ..

Unlawful change of plea to not guilty ..

Personage and barratry"

[12] Having addressed our minds carefully to the question of whether there is any arguable error of law in either of the two sentences and convictions which remain intact, we can identify none. The Presiding District Judge's characterisation of the Appellant's case stated application as frivolous is, in our judgment, unimpeachable.

[13] The application for an order compelling the Presiding District Judge to state a case for the opinion of this Court is, accordingly, refused.

[14] The Court will consider submissions relating to costs or any other ancillary matter.